

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

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**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

MUR: 4915

DATE COMPLAINT FILED: August 6, 1999

DATE OF NOTIFICATION: August 12, 1999

DATE ACTIVATED: October 13, 2000

EXPIRATION OF STATUTE OF LIMITATIONS:  
July 22, 2004

STAFF MEMBER: Dawn R. Jackson

COMPLAINANT: The New Hampshire Republican State Committee

RESPONDENTS: Vice President Albert Gore, Jr.

Gore 2000, Inc. and Jose Villareal, as treasurer

Pacific Gas and Electric Corporation

**RELEVANT STATUTES:**

2 U.S.C. § 431(8)(A)(i)

2 U.S.C. § 437g(a)

2 U.S.C. § 441a(b)(1)(A)

2 U.S.C. § 441a(b)(2)(B)(ii)

2 U.S.C. § 441b

2 U.S.C. § 441b(a)

26 U.S.C. § 9033(b)(1)

11 C.F.R. § 100.7(a)(1)

11 C.F.R. § 100.7(a)(1)(iii)(A)

11 C.F.R. § 100.8(a)(1)(iv)(A)

11 C.F.R. § 111.4

11 C.F.R. § 111.5

11 C.F.R. § 9038.1(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

21-04-399-4888

## I. GENERATION OF MATTER

MUR 4915 was generated by a complaint filed by the New Hampshire Republican State Committee on August 6, 1999. Attachment 1. The complainant alleges that Gore 2000, Inc. ("Committee") arranged a canoe trip to the Connecticut River in New Hampshire to highlight environmental issues. *Id.* The complainant contends that Pacific Gas & Electric Corporation ("PG&E") kept a dam open for 15 hours and released between 97,000,000 and 4,000,000,000 gallons of water to keep the candidate's canoe afloat. *Id.* The complaint specifically alleges that this procedure was a "highly unusual and complex undertaking" by PG&E and it amounted to a prohibited in-kind contribution to the Committee. *Id.*

On September 14, 1999, the Committee and the candidate submitted a response that denied the complainant's allegations on the basis that the candidate's participation in the Connecticut River Ceremony was not a campaign event.<sup>1</sup> Attachment 2. On September 5, 1999, PG&E submitted a response that denied the allegations. Attachment 3.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Law

The Federal Election Campaign Act of 1971, as amended (the "Act") sets forth that a contribution includes a gift, subscription, loan, advance, deposit of money, or

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<sup>1</sup> On August 20, 1999, the Committee requested a twenty-day extension of time to respond to the complaint. On August 26, 1999, the extension was granted. On August 20, 1999, PG&E requested a two-week extension of time to respond to the complaint. The extension was granted on August 26, 1999.

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anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i). The provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods and services is a contribution. 11 C.F.R. § 100.7(a)(1)(iii)(A). If goods and services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods in the market from which they ordinarily would have been purchased at the time of the contribution. *Id.*

All in-kind contributions are "anything of value" within the meaning of expenditure. 11 C.F.R. §100.8(a)(1); 11 C.F.R. § 100.8(a)(1)(iv)(A). An expenditure is made on behalf of a publicly financed committee if it is made by any person authorized to or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure. 2 U.S.C. § 441a(b)(2)(B)(ii). As a condition precedent to receiving public financing, candidates and committees agree to overall and state expenditure limitations. 2 U.S.C. § 441a(b)(1)(A); 26 U.S.C. § 9033(b)(1). In the 2000 presidential election, the overall expenditure limitation was \$33,780,000 and the New Hampshire expenditure limitation was \$675,600.

The Act prohibits corporations from making contributions or expenditures in connection with a Federal election. 2 U.S.C. § 441b(a). The Act further prohibits any officer or director of any corporation from consenting to any contribution or expenditure by the corporation. *Id.* This provision also makes it unlawful for a political committee to knowingly accept or receive corporate contributions. *Id.*

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**B. Analysis**

The complaint alleges that the Committee accepted a prohibited in-kind corporate contribution from PG&E in violation of 2 U.S.C. § 441b. Specifically, the complaint alleges the Committee arranged a campaign trip to the Connecticut River in New Hampshire where PG&E released between 97,000,000 and 4,000,000,000 gallons of water to keep the candidate's canoe afloat during a photo opportunity. Attachment 1. In support of this argument, the complainant cites an August 2, 1999 article from the *Washington Times* which states this procedure "set off a complicated series of actions by a variety of public and private entities that comprise the region's electric industry." *Id.*

The Committee contends that the candidate's trip was a part of his official duties as Vice President. Attachment 2. The Committee argues that the purpose of the canoe trip was for the candidate to announce that federal funds were designated to enhance the Connecticut River and surrounding communities. *Id.* In support of its contentions, the Committee submitted a press release from the White House to prove that the candidate's trip to New Hampshire was part of his official duties. *Id.* The Committee contends that it did not plan the event or the canoe trip, invite the attendees, stage the event, and it did not prepare the candidate's remarks. *Id.*

Moreover, the Committee argues that "neither the Committee nor the Vice President solicited any contributions at the event, engaged in any express advocacy at the event or otherwise referred to the campaign." Attachment 2. In support of this argument,

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the Committee submitted the remarks of the candidate and other speakers during the ceremony.<sup>2</sup> *Id.*

PG&E raises two arguments in its response. First, PG&E asserts that it is not a respondent due to the fact that the complainant did not allege that PG&E violated any law. Attachment 3. PG&E argues that Commission procedures governing the process for complaints "limit the OGC to reviewing complaints" to determine whether they satisfy criteria for a proper complaint.<sup>3</sup> *Id.* According to PG&E, these criteria require that a complainant clearly identify each person as a respondent or entity who allegedly committed a violation. 11 C.F.R. § 111.4. *Id.*

Second, PG&E argues that the candidate's participation in the Connecticut River Ceremony was not a campaign event. Attachment 3. PG&E's maintains that the event and canoe ride were part of a ceremony hosted by the Connecticut River Joint Commissions ("CRJC") and the United States Environmental Protection Agency ("EPA") to demonstrate federal support and to announce new federal grants awarded to the Connecticut River and its surrounding communities. *Id.* According to PG&E, CRJC expressed the concerns of the Secret Service that there were relatively low water levels. More specifically, CRJC asked PG&E to adjust the timing of the daily water release on the day of the ceremony to ensure a safe water flow for the canoe ride. *Id.* PG&E

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<sup>2</sup> Also included were the remarks of Sharon F. Francis, draft remarks of Whitty Sanford, and the draft talking points of John DeVillars. Attachment 2.

<sup>3</sup> The Office of General Counsel reviews complaints and notifies each respondent that the complaint was filed. 11 C.F.R. § 111.5. The Act and the regulations do not prohibit the Office of General Counsel's identification of respondents not named by a complainant. 2 U.S.C. §437g(a); 11 C.F.R. § 111.5.

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contends that it is not unusual for PG&E to consider water management requests to accommodate such activities. *Id.* PG&E maintains that it released water from the hydropower facilities where the events took place earlier than normal. However, PG&E argues that no water or hydropower was wasted by shifting the daily schedule and all the power generated by this release was sold. *Id.*

Based on the complaint and the responses from the Committee and PG&E, there is no evidence that the Connecticut River Trip was a campaign event.<sup>4</sup> The information presented suggests that the Connecticut River Trip was an official trip for the candidate in his capacity as Vice President and was associated with the CJCC and the EPA. The undisputed fact that members of the CJCC and EPA were listed on the canoe manifest supports this argument. Moreover, the itinerary of the event and copies of the speeches presented do not suggest that there was express advocacy or solicitation of contributions.<sup>5</sup>

Attachment 2. This supports the argument that the candidate's speech was made as a

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<sup>4</sup> As a result of the Committee receiving public funds for the primary campaign, the Commission will conduct a mandatory audit of the Committee. 11 C.F.R. § 9038.1(a). This Office made an inquiry to the Audit Division to determine if there was any information from the audit that linked the Committee with the Connecticut River Trip or if there was a campaign event that preceded or followed this event. The Audit Division has not commenced the audit of the Committee. Therefore, the Audit Division was unable to provide any information on the Committee. However, the Committee's disclosure reports do not reveal expenditures in the New England area that would link the Committee to the Connecticut River Trip.

<sup>5</sup> In the context in Advisory Opinion 1992-6, presidential candidate David Duke inquired whether his acceptance of an honoraria and travel expenses for a speech at Vanderbilt University would result in a contribution or expenditure. The Commission held that particular activities involving a federal candidate will result in a contribution to or expenditure on behalf of a candidate if the activities involve (i) the solicitation, making or acceptance of contributions to the candidate's campaign, or (ii) communications expressly advocating the nomination, election or defeat of any candidate. The Commission assumed, based on the information presented in the advisory opinion request, that there would not be a campaign promotion in conjunction with the lecture, a press conference or campaign event before or after the lecture, or any reference made to the campaign or another presidential candidate during the lecture or question and answer period. The Commission concluded that Mr. Duke's appearance would reflect his career as a recent state legislator and speaker at universities and would not result in a contribution to or expenditure on behalf of his candidacy.

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result of his duty as an officeholder, and was not related or in reference to the candidate's campaign for Federal office. *Id.* The candidate's speech addressed the new federal commitment to support environmental restoration, historic preservation, and the appointment of a full-time river navigator along the Connecticut River. *Id.* The other speakers also addressed the restoration of the Connecticut River and the importance of federal funding. *Id.*

Assuming *arguendo* that the Connecticut River Trip was a campaign event, the releasing of the water earlier than scheduled from the dam does not necessarily amount to an in-kind contribution. In PG&E's response, it stated that all of the power generated by the release was sold. Attachment 3. Furthermore, there is no evidence that this service was provided at cost to PG&E.

PG&E's response implies that the early release of water was done in the ordinary course of business by PG&E. Attachment 3. If PG&E has a policy and practice of providing an early release of water upon request to ensure safety for other recreational activities, the early release in the instant case would not be considered in connection with a Federal election or to influence a Federal election.<sup>6</sup> The facts seem to suggest the early release of water was merely a safety procedure for the canoeing party. Moreover, PG&E

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<sup>6</sup> In Advisory Opinion 1987-24, the Commission concluded that a hotel providing a presidential candidate and staff complimentary rooms, flowers, food, beverages, and other amenities would not be an in-kind contribution if it is the hotel's policy and practice to provide these complimentary items to all customers who reserve a block of rooms or hold banquets. Moreover, these complimentary items were dependent on the amount of business the customer generated, and were offered to political candidates on the same terms and conditions as it did to non-political clients. Accordingly, the complimentary services were provided at the usual and normal charge and were not in connection with a Federal election nor given to influence the election.

as owner, operator, and licensee of the hydropower facilities was legally obligated to provide the canoeing party with standard safety measures.<sup>7</sup>

This Office does not believe that any violations occurred in this matter.

Accordingly, this Office recommends that the Commission find no reason to believe that Albert Gore, Gore 2000, Inc., Jose Villareal as treasurer, or PG&E violated 2 U.S.C. § 441b.

### III. RECOMMENDATIONS

1. Find no reason to believe that Vice President Albert Gore, Jr. violated 2 U.S.C. § 441b.
2. Find no reason to believe that Gore 2000, Inc. and Jose Villareal, as treasurer, violated 2 U.S.C. § 441b.
3. Find no reason to believe that PG&E Corporation violated 2 U.S.C. § 441b.
4. Approve the appropriate letters; and
5. Close the file.

Date

2/19/01

Lois G. Lerner

Acting General Counsel

<sup>7</sup> Prior to issuing a license to a private party or to a state or local government for the purposes of constructing, operating and maintaining dams, the Federal Energy Regulatory Commission must ensure that a project is safe. The Federal Power Act contemplates that Federal Energy Regulatory Commission will require licensees to take reasonable measures to protect life, health, and property. *South Carolina Public Service Authority v. Federal Energy Regulatory Commission* 850 F.2d 788, 792 (D.C. Cir. 1988).



**Attachments:**

1. Complaint by New Hampshire Republican Committee dated August 6, 1999.
2. Response from Ryan, Phillips, Utrecht, & MacKinnon on behalf of Gore 2000, Inc. dated September 14, 1999.
3. Response from Akin, Gump, Strauss, Hauer & Feld, L.L.P, on behalf of PG&E dated September 15, 1999.

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# FEDERAL ELECTION COMMISSION

Washington, DC 20463

## MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *RC*

DATE: February 20, 2001

SUBJECT: MUR 4915 - First General Counsel's Rpt.

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

### CIRCULATIONS

SENSITIVE

☒

NON-SENSITIVE

☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

96 Hour TALLY VOTE ☐

### DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters ☐

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DSP ☐

STATUS SHEETS ☐

Enforcement ☐

Litigation ☐

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RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

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